

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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:
UNITED STATES OF AMERICA, :
615 CHESTNUT STREET SUITE 1250: :
PHILADELPHIA PA 19106-4476, :
:
Plaintiff :
:
v. : CIVIL ACTION NO. 03-
:
UNITED STATES HOLOCAUST :
MEMORIAL MUSEUM :
100 RAOUL WALLENBERG PLACE, S.W. :
WASHINGTON DC 20024-2126 :
:
and :
:
WILLIAM MARTIN :
524 PRIMOS AVENUE :
FOLCROFT PA 19032, :
:
Defendants :
:
x-----x

COMPLAINT FOR STATUTORY INTERPLEADER

This is an action for statutory interpleader pursuant to 28 U.S.C. Section 2361. The United States, the plaintiff herein, has possession of certain documents which were generated by the German Government during World War II and have substantial historical significance and value. The defendants herein, the United States Holocaust Memorial Museum and William Martin, each assert the right to take possession of these documents in which the United States itself has no beneficial interest. Therefore, the purpose of this interpleader action, as more fully pled below, is

to resolve these conflicting claims to these documents and relieve the United States of any liability for them.

THE PARTIES

1. The United States of America is the plaintiff herein.

2. The United States Holocaust Memorial Museum ("USHMM") is a defendant herein. It is an independent establishment of the United States pursuant to an Act of Congress, 36 U.S.C. Section 2301, et seq. Its function is, among others, to operate and maintain a permanent living memorial museum to the victims of the Holocaust in cooperation with the Secretary of the Interior and other Federal agencies. The USHMM is located in Washington DC.

3. William Martin is a defendant herein. Martin resides at 524 Primos Avenue, Folcroft PA and is a citizen of the Commonwealth of Pennsylvania.

JURISDICTION AND VENUE

4. There is diversity of citizenship between defendant USHMM and defendant Martin. As more fully alleged hereinbelow, USHMM and Martin are adverse claimants to historical documents which have a value in excess of \$500. Accordingly, the Court's subject matter jurisdiction arises under 28 U.S.C. Section 1335.

5. By operation of 28 U.S.C. Section 2408, the United

States is not required to deposit the documents with the Court as a predicate to subject matter jurisdiction.

6. One of the defendants herein, Walter Martin, resides in this District. Accordingly, venue is proper pursuant to 28 U.S.C. Section 1397.

SUMMARY OF ADVERSE CLAIMS

7. As one of the conditions of Germany's surrender at the conclusion of World War II in 1945, ownership of all documents created by the Nazi German government ("the documents") was conveyed to the Allied powers, one of which was the plaintiff herein, the United States of America.

8. In August 1945, the Allied powers established the International Military Tribunal, the purpose of which was to hold trials of various war criminals and of which the United States, through the Office of Chief of Counsel for War Crimes, was a component part.

9. During 1945-1946, Dr. Robert M. W. Kempner served in the Office of Chief of Counsel as a prosecutor and research director, and from 1946 to 1949, he served therein as Deputy Chief Counsel and as Chief Prosecutor of the United States Military Tribunal No. 11.

10. Numerous of the German documents which are referred

to above and are the subject matter of this action were used both by the prosecution and defense at the trials of war criminals by the International Military Tribunal. In the course of his service in the United States Office of Chief of Counsel, Dr. Kempner had access to these documents.

11. While a portion of the documents remained the property of the United States Government and are deposited in the National Archives, the vast majority were returned, by agreement, to the Federal Republic of Germany. Some, however, remained in the possession of Dr. Kempner for many years.

12. The documents in Dr. Kempner's possession relate primarily to the planning of aggressive war against and the plundering, spoliation, and economic exploitation of the Soviet Union. Among others, the documents evidence meetings held at German Armed Forces High Command, War Economy, and Armament Office (Oberkommando der Wehrmacht, Wehrwirtschafts- und Ruestungsamt). The material contained therein is invaluable to the study and understanding of the destruction of the European Jews and thus the memorialization of the Holocaust. Their value on the open market, while difficult to estimate precisely, would far exceed \$500.

13. Kempner died in 1993. In his will, he bequeathed the documents in his possession to the USHMM, which asserts, as a result, that it is entitled to possession of them.

14. According to defendant Martin, at some point after Kempner's death, an individual was retained by the Kempner estate to conduct a clean-out of Kempner's house and to remove all remaining items and that said individual subcontracted the work to him.

15. Martin asserts further that the items which were removed from Kempner's house included at least some of the German documents which had been in Kempner's possession since shortly after World War II, all as more fully alleged herein above.

16. In the summer of 2001, the Federal Bureau of Investigation ("FBI") began an investigation into the possible theft of the German documents from the Kempner estate. During the course of the investigation, the FBI contacted Martin, and Martin voluntarily produced the documents in his possession to the FBI.

17. The FBI and the United States Attorney have concluded that Martin committed no criminal wrongdoing, and they have terminated their investigation. Martin, however, asserts that he is entitled to the documents which are still in the possession of the FBI, and his legal counsel has written to the United States Attorney, asking that they be returned.

PROPRIETY OF INTERPLEADER

18. The United States acknowledges that the documents

should be either provided to the USHMM or returned to Martin.

19. The United States has no beneficial interest in the documents.

20. Absent a resolution of the conflicting claims in a single proceeding, the United States is subject to multiple litigation and a substantial risk of duplicate or inconsistent rulings on proper ownership of the documents.

21. This interpleader is therefore proper, and the United States should be discharged from any further obligation in connection with the dispute between defendants USHMM and Martin in respect of the ownership of the documents.

WHEREFORE, the United States prays for an order restraining defendants, and each of them, from instituting any action against the United States for possession of the documents or any action seeking a judgment that either of them is entitled to possession of the documents; directing defendants to interplead and settle between themselves the right to possession of the documents; discharging the United States from any and all liability arising from its present custody of the documents; and granting the United States such further relief as may be just and proper.

Respectfully submitted,

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